

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE:)
PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)MDL NO. 1456
LITIGATION)Civil Action No. 01-CV-12257-PBS
Judge Patti B. Saris
THIS DOCUMENT RELATES TO)
ALL CLASS ACTIONS)

VIDEOTAPED DEPOSITION OF PETER

KAMINS, called as a witness on behalf of the
Plaintiffs, pursuant to the applicable
provisions of the Federal Rules of Civil
Procedure, before Jeanette N. Maracas,
Registered Professional Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the Offices of Ropes &
Gray, LLP, One International Place, Boston,
Massachusetts, on Tuesday, July 19, 2005,
commencing at 10:18 a.m.

1 upon a percentage increase over the
2 wholesaler's cost, the net cost to the
3 wholesaler plus 16 two-thirds percent,
4 an increase over the wholesaler's cost
5 depending upon the wholesaler's profit
6 margin and the volume it does with the
7 wholesaler. The actual price that the
8 retailer pays the wholesaler is usually
9 less than 16 two-thirds percent due to
10 the competition for business among
11 wholesalers." Did I read that correctly?

12 A. Yes.

13 Q. Is that your, what your understanding was
14 of AWP in 1990 through 1992?

15 MR. CHRISTOFFERSON: Objection. You
16 may answer.

17 A. This is the first time that I can remember
18 seeing this. I don't remember in 1990 what
19 the definition may have been for this.

20 Q. And just to -- your answer was this is the
21 first time you've ever seen this definition
22 in a Schering sales policy and procedure

1 manual?

2 A. This is all I recollect seeing. I have not
3 remembered seeing this before.

4 Q. As far as the substance or the definition
5 of AWP that you have before you in Exhibit
6 Kamins 001, does that reflect your
7 understanding of what AWP is?

8 A. General understanding, yes.

9 Q. Mr. Kamins, do you also -- are you familiar
10 with the term "spread" as it relates to
11 AWP and invoice price?

12 A. I've heard the term before.

13 Q. Have you ever used the term in either
14 conversations or meetings within
15 Schering-Plough regarding any marketing
16 or pricing issues?

17 A. No.

18 Q. What is your understanding of what the
19 term "spread" means?

20 A. If you're referring to, which I don't use
21 and I'm not that familiar with, would be
22 the difference between what you've just

1 read here, the average -- the purchase price
2 and the 16 and two-thirds.

3 Q. Have you ever been -- and I'm not trying
4 to repeat myself, but I want to make it
5 clear that your recollection is that you've
6 never been party to any Schering-Plough
7 meetings where spread was discussed as
8 part of a marketing strategy or issue?

9 A. No.

10 Q. I'm going to refer you back to another
11 page which is part of Exhibit Kamins 001,
12 and the page is marked as SW 0098595, I
13 believe. That's a little bit more towards
14 the beginning. That's 98595, Mr. Kamins.

15 A. 98595?

16 Q. Yes, sir.

17 A. Okay.

18 Q. That appears to be a letter from a Mr.
19 Richard Jay Kogan. Is that how you see that?

20 A. Yes.

21 Q. That particular letter is dated August 20,
22 1996. Do you ever recall seeing a letter

1 such as this?

2 A. I do not remember this particular letter
3 from 1996, but I could have seen it.

4 Q. Are you aware of -- if you would, please,
5 just go ahead and if you would review the
6 content of the letter.

7 A. (Witness examines document) Okay.

8 Q. Mr. Kamins, my question is this. Were you
9 aware that there existed at Schering-Plough
10 a hotline where someone could call and get
11 information regarding legal and ethical
12 guidelines?

13 MR. CHRISTOFFERSON: Objection. You
14 may answer.

15 A. I knew there were means of communicating
16 information or communicating something of
17 this sort. I don't remember the term
18 "hotline," but I do remember there were
19 means of communicating such as stated in
20 this letter.

21 Q. From your answer, am I correct to understand
22 that you have never employed or used a

1 company.

2 Q. When you started as a director of trade
3 sales in 1990, can you just tell me what
4 were your duties and how did you go about
5 performing them in a general way?

6 A. In 1990 we had an account responsibility
7 based on the geographic area I had mentioned.
8 Our responsibility would be the management
9 of those accounts in that geographic area.

10 Q. And how would you describe the accounts
11 that you were responsible for?

12 A. Chain and wholesaler accounts headquartered
13 in the region that I was responsible for.

14 Q. Now, at any time during from 1990 to today,
15 have you ever marketed any Schering-Plough
16 product by publishing the spread? By that
17 I mean AWP and invoice prices.

18 MR. CHRISTOFFERSON: Objection. You
19 may answer, if you understand it.

20 A. I'm not sure what you mean by marketing the
21 product. Could you just explain that?

22 Q. I will ask the question. Have you ever

1 sent to any of your customers, the chains
2 or wholesalers, information regarding AWP?

3 A. We have in the past listed products with
4 AWP on it. We since no longer have done
5 that.

6 Q. When did that stop?

7 A. My guess is probably three or four years
8 ago.

9 Q. And prior to three or four years ago, can
10 we use the date, say, 2001? Is it somewhere
11 around 2001?

12 A. My guess is it's somewhere within that
13 three or four-year period.

14 Q. Whatever that period is, I'll just say
15 I'm going to use 2001 and we'll understand
16 that that may not be correct. But prior to
17 2001, you would send information to your
18 customers regarding AWP; is that correct?

19 MR. CHRISTOFFERSON: Objection. You
20 may answer.

21 A. There would be the list of AWP on a product,
22 yes.

1 Q. And the communications wherein you would
2 list or provide AWP information, that was
3 a communication with an intent to sell
4 product; is that correct?

5 MR. CHRISTOFFERSON: Objection. You
6 may answer.

7 A. The intent was to notify them of what our
8 current prices were on the product.

9 Q. You had no intent that they would act on
10 that and buy your product; is that what
11 you're telling me?

12 MR. CHRISTOFFERSON: Objection. You
13 may answer.

14 A. It was a notification of what our current
15 prices were.

16 Q. And these were your customers that you were
17 selling product to; is that correct?

18 A. That we were notifying them of our products,
19 yes.

20 Q. Now, as a national -- well, director of
21 trade sales for a specific region, since
22 1990, did you sell all of the Schering-Plough

1 products?

2 A. Not all of them. They were the
3 pharmaceutical products, branded
4 pharmaceutical products.

5 Q. Branded pharmaceutical products. Were you
6 ever involved in combining any of the branded
7 pharmaceutical products with any promotions
8 that included Warrick generics?

9 A. Yes, we had a program.

10 Q. And what were those programs?

11 A. They were a market share program.

12 Q. And what combined market share program do
13 you recall selling or promoting to your
14 customers?

15 A. I don't remember specific details, but we
16 had a market share program based on the
17 specific category in which those programs
18 of Warrick and Proventil were involved in
19 and that would serve as the basis for the
20 vascular products.

21 Q. That is an Albuterol Sulfate line of
22 products?

1 Q. Now, Mr. Kamins, in connection with your
2 training as a sales rep before becoming a
3 director of trade sales, did you receive
4 training from Schering with regard to
5 reimbursement issues for your customers?

6 A. No, I don't remember that as a sales rep
7 in '78. I don't remember having specifically
8 education on reimbursement.

9 Q. At any time while you were a sales
10 representative, did you ever have any
11 education from Schering on reimbursement
12 issues for pharmacies and other providers?

13 A. Back in 1978, I don't remember that
14 reimbursement being a topic that we were
15 being reviewed or educated on.

16 Q. After you became a trade director and I
17 believe it was 1990, coming forward, did
18 you receive any training from Schering
19 relative to reimbursement issues for your
20 customers, particularly your chain
21 pharmacies?

22 A. No.

1 Q. None at all?

2 A. (Witness shakes head)

3 Q. Did you ever receive any training with
4 regard to profitability of the chain
5 pharmacies relative to reimbursement
6 issues?

7 MR. CHRISTOFFERSON: Objection. You
8 may answer.

9 A. No.

10 Q. Is it your understanding that AWP has in
11 the past been a factor considered in
12 reimbursement scenarios, both from the
13 private as well as public reimbursement
14 to providers?

15 MR. CHRISTOFFERSON: Objection. You
16 may answer.

17 A. I've heard that it's used in certain areas.

18 Q. Have you ever discussed reimbursement
19 issues with any of your customers?

20 A. No.

21 Q. Have you ever discussed the margin spread,
22 return of investment or return to practice

1 regarding the difference between AWP and
2 invoice price with any of your customers?

3 MR. CHRISTOFFERSON: Objection. You
4 may answer.

5 A. No.

6 Q. Have you ever had any of those same
7 discussions regarding reimbursement issues
8 with any of the Schering co-workers?

9 MR. CHRISTOFFERSON: Objection. You
10 may answer.

11 A. No.

12 Q. You can go ahead and answer now.

13 A. No.

14 Q. Has the spread as it affects reimbursement by
15 third parties to any of your customers ever
16 been a source or a consideration in any of
17 your pricing strategies?

18 MR. CHRISTOFFERSON: Objection.

19 Q. By "your," I'm talking about Schering-Plough
20 marketing or pricing strategies.

21 MR. CHRISTOFFERSON: Objection. You
22 may answer.

1 Q. To your knowledge.

2 A. No.

3 Q. What is your connection either now or in
4 the past with Schering Sales Corporation?

5 MR. CHRISTOFFERSON: Objection. You
6 may answer, if you understand it.

7 A. If I understand what you're asking, I think
8 at some point the trade sales fell under
9 the Schering Sales Corporation, but it has
10 fallen under different areas over the time
11 I've been there.

12 Q. To the best of your knowledge, what time
13 period was your group under the Schering
14 Sales Corporation, however you want to
15 put it, under its control or within its
16 organization?

17 MR. CHRISTOFFERSON: Objection. You
18 may answer.

19 A. It will be a guess. It would have been maybe
20 late '90s.

21 Q. Were you involved or did you play any role
22 in the facts that led to the guilty plea to

1 an anti-kickback violation by Schering
2 Corporation last year?

3 MR. CHRISTOFFERSON: Objection. You
4 may answer.

5 A. No.

6 Q. Can you identify any of the persons who
7 were directly involved in violations of
8 the anti-kickback laws that led to the
9 guilty plea last year by Schering Sales
10 Corporation?

11 MR. CHRISTOFFERSON: Objection. You
12 may answer.

13 A. No.

14 Q. Have you ever been instructed by Schering
15 that it was against the policy of Schering
16 to market to your customers the spread or
17 pricing advantage created by the difference
18 between AWP and invoice price?

19 MR. CHRISTOFFERSON: Objection. You
20 may answer.

21 A. Can you repeat the end, please?

22 MR. McNEELY: Would you read that

1 back, please?

2 (Question read)

3 A. We didn't do it. I don't remember exactly
4 if we were instructed not to. We may have.

5 Q. As I understand your testimony today, is
6 it correct that you did not discuss AWP
7 and reimbursement issues with any of your
8 customers?

9 A. Correct.

10 Q. Now, is it your understanding that marketing
11 the spread as part of a selling strategy was
12 against Schering-Plough policy?

13 MR. CHRISTOFFERSON: Objection. You
14 may answer.

15 A. I never heard it in terms of marketing a
16 spread. We just did not do that. My
17 understanding is we would not do that and
18 I did not do that.

19 Q. If you had heard about somebody marketing
20 the spread as it related to reimbursement
21 profitability of one of your customers, is
22 that something that you would have reported

1 to a supervisor?

2 MR. CHRISTOFFERSON: Objection.

3 Hypothetical. You may answer, if you
4 understand it.

5 A. I would probably have raised the issue if
6 I knew of it, yes.

7 Q. Have you ever raised the issue with any
8 supervisor because you learned that someone
9 was developing a strategy relative to
10 marketing the spread?

11 A. No.

12 (Exhibit Kamins 015 marked for
13 identification.)

14 Q. Mr. Kamins, you've been handed what has
15 been marked as Exhibit Kamins 015. If you
16 would please just take a moment to review
17 that document.

18 A. (Witness examines document)

19 Q. What has been marked as Exhibit Kamins 015,
20 can you identify that document?

21 A. It appears to be a document from a Brian
22 Longstreet to an Olav Hellebo and James